



DRUGS, ALCOHOL & RANDOM TESTING

Directive 5 - 115

Date of Issue: July 2013 Amends/Cancel: N/A

I. PURPOSE

- A. To delineate the methods of testing, the selection process, the testing procedures, the consequences of positive test results, and the consequences for refusal to submit to the drug testing.
- B. To provide management with a method for detecting a drug problem and a means for identifying problems associated with drug use/abuse.
- C. To protect the interests of the Department of General Services Maryland Capitol Police (DGS-MCP) and its employees through proper management of a drug screening program.

II. POLICY

It shall be the policy of the DGS-MCP to strictly enforce the prohibitions against illegal and/or inappropriate drug and/or alcohol use by all members of the agency. Supervisors will be alert to any signs or symptoms of any violations of law and the provisions of this Directive and will take immediate action in the event that there are reasonable grounds to believe that any such violation has occurred, is occurring, or can be reasonably expected to occur in the future

III. AUTHORITY

- A. The State of Maryland Substance Abuse Policy is defined and detailed by Executive Order 01.01.1991.16
- B. The Drug Testing Program is authorized under the Code of Maryland Regulations (COMAR), Title 17, Subtitle 04, Chapter 09, Testing for Illegal Use of Drugs.

IV. DEFINITIONS

- A. “Controlled Dangerous Substance Offenses” – Can be any one or more of the following:
 - 1. A violation of the controlled dangerous substance laws of the State of Maryland as stated in the Criminal Law article of the Annotated Code of Maryland including, but not limited to, the use, possession, sale or distribution of a controlled dangerous substance.
 - 2. A violation of a CDS related law of the State of Maryland, such as:

- a. Maryland Vehicle Law prohibits against driving while impaired by any drug or controlled dangerous substance.
 - b. The Natural Resources Article prohibition against carrying a firearm to hunt any wild bird, mammal, amphibian, or reptile while under the influence of any narcotic drug.
 - c. The Natural Resources Article prohibition against operating a boat under the influence of a controlled dangerous substance, unless the person has legal authorization, or under the influence of any drug, or combination of drug(s) and alcohol, such that the person cannot operate the boat safely.
3. A violation of the drug laws of some other jurisdiction, if the substance involved is considered to be a controlled dangerous substance in the State of Maryland.
 4. Abuse or misuse of any drug.
 5. Reporting for duty or working under the inappropriate influence of a prescription drug or over-the-counter drug.
 6. Reporting for duty or working under the influence of a controlled dangerous substance.

B. “Alcohol Abuse” – The use of alcohol that involves:

1. A violation of the Transportation Article of the Annotated Code of the State of Maryland involving alcohol use including, but not limited to, the following:
 - a. Driving or attempting to drive while under the influence of alcohol.
 - b. Driving or attempting to drive while impaired by the consumption of alcohol.
 - c. Driving a motor vehicle on a highway while consuming an alcoholic beverage.
2. A violation of the Natural Resources Article of the Annotated Code of the State of Maryland involving alcohol use including, but not limited to, the following:
 - a. Operating or attempting to operate a boat while intoxicated by the consumption of alcohol or under the influence of alcohol.
 - b. Carrying a firearm to hunt any wild bird, mammal, amphibian, or reptile while intoxicated or under the influence of alcohol.
3. Reporting for duty or working while under the influence of alcohol.
4. Consuming any alcoholic beverage while working for the State of Maryland.
5. The use of alcohol to the extent that it impairs job performance.

C. “Sensitive employee” – The Secretary of Budget and Management maintains a list of sensitive employees. The Chief of Police or DGS Personnel System has the authority to make the designation. There are several conditions that are used to classify a position as sensitive.

1. Conditions indicating the classification of “sensitive” for a given position:

- a. An employee in the classification has a substantially significant degree of responsibility for the safety of others and there is a potential that impaired performance of the employee could result in death of or injury to the employee or others;
- b. An employee in the classification is required to carry a firearm;
- c. An employee in the classification is directly involved in efforts to interdict the flow of narcotics; or
- d. An employee in the classification is directly involved with narcotics law enforcement.

2. Police officers and security officers are considered to be “sensitive employees.”

D. Random Testing – A system of selecting sensitive employees for unannounced testing for illegal use of drugs.

E. Workplace – Any place where an employee is performing work for the State of Maryland.

F. Appointing authority – “A person who has the power to make appointments and terminate employment.”

V. PROCEDURES

A. Officer Responsibilities and Reporting Requirements

1. Alcohol abuse encompasses all of those actions, violations of law and other situations described in this order, including those detailed under the definition of “Alcohol Abuse.”
2. Controlled dangerous substance offenses encompass all of the violations of law, actions and situations described in this order, including those detailed under the definition “Controlled Dangerous Substance Offenses.”
3. If a DGS-MCP employee is detained or questioned by a DGS-MCP Police Officer, or by law enforcement, and the employee has any reason to believe that the detainment/questioning was prompted by suspicions that the employee was involved in any violations, actions or situations defined in this Directive under “Alcohol Abuse” or “Controlled Dangerous Substance Offenses,” the DGS-MCP employee will promptly, notify the Detachment Commander in writing that he or she was detained and/or questioned, and include the following information, at a minimum, in the memorandum:
 - a. The date, time, and location of the incident;
 - b. The circumstances surrounding the incident;
 - c. The names of any other law enforcement officers who were involved or present at the scene, as well as the employing law enforcement agencies of the officers present.

- d. If any injuries were suffered by anyone involved in the incident;
 - e. If the employee was arrested or charged with any violation of law as a result of the incident.
 - f. The details concerning the final outcome of the incident.
4. It is the responsibility of employee to take all necessary steps to get any assistance needed when it becomes apparent that the employee has a substance abuse problem.
 5. An employee will immediately notify the Detachment Commander directly and in writing when the employee has reasonable grounds to believe that another state employee:
 - a. Is involved in any action, violation or situation defined under “Controlled Dangerous Substance Offenses” and/or “Alcohol Abuse;”
 - b. Has committed a violation, action or has been involved in any situation defined under “Controlled Dangerous Substance Offenses” and/or “Alcohol Abuse;”
 - c. Will most likely commit a violation, action, or become involved in any situation defined under “Controlled Dangerous Substance Offenses” and/or “Alcohol Abuse.”
 6. Notification to the Detachment Commander will be made regardless of the rank, position or classification of the state employee, such as classified, unclassified, contractual, etc.
 7. Supervisors on all levels will be especially alert for any signs or symptoms that may indicate that a subordinate or other member of the DGS-MCP has developed or is developing a substance abuse problem. It is in the best interests of the DGS-MCP and the affected employee that prompt, appropriate action is taken to prevent the situation from worsening and injuries or other damages occurring as a result of the drug/alcohol problem.

B. Random Drug Screening

1. This testing is administered and monitored by employees assigned to the Personnel Division, Department of General Services.
2. A computer program is prompted to randomly produce employee Personal Identification Numbers (PIN).
3. Personnel will notify DGS-MCP Headquarters of the date, time, and location of the drug screening.
4. The employee to be tested is ordered to submit to the test and provided with a copy of the Controlled Dangerous Substance Test Order. This form provides the employee with the following information:
 - a. Date, time and location that the urine sample will be collected;

- b. Basis for requiring the test;
 - c. Types of substances for which the test is designed to screen;
 - d. Information concerning the officer's options in the event of a positive result; and
 - e. Notification of possible sanctions that could be imposed if the officer refuses to submit to the test.
5. The designated Personnel Division employee is present as a witness and available for questions at the time of the testing. The sample is collected and testing completed by a company contracted with the Department of Budget and Management.

C. Drug Testing Program

1. Testing for illegal use of drugs shall be required for positions in sensitive classifications, or for sensitive positions if the applicant has not been eliminated from consideration at an earlier stage of the recruitment process
2. The drugs that shall be screened include, but are not limited to:
 - a. Amphetamines
 - b. Barbiturates
 - c. Benzodiazepines.
 - d. Cocaine
 - e. Marijuana/Cannabinoids
 - f. Opiates
 - g. Phencyclidine (PCP)
3. Testing will take the form of analysis of urine specimens.
4. Upon receipt of instruction on the DGS program for testing for the illegal use of drugs, each employee will complete and sign an "Employee Acknowledgment of Instruction in Testing for Illegal Use of Drugs" form.
5. Any employee arrested for an alleged controlled dangerous substance offense shall report the arrest to the Chief of Police immediately. Failure to report the arrest shall result in disciplinary action, up to and including dismissal.

D. Testing

1. Conditions for Testing for Illegal Use of Drugs
 - a. The Chief of Police may require that an employee be tested if he/she has reasonable suspicion to believe the employee has illegally used drugs.

- b. The Chief of Police may require employees in sensitive classifications or in sensitive positions to be tested for the illegal use of drugs if any of the following conditions exist:

(1) Reasonable Suspicion: This condition exists when the Chief of Police has reasonable and specific grounds to believe that a drug abuse test of an employee shall produce evidence of illegal use of drugs.

(2) Incident Triggered Testing: This condition exists when an injury to the employee or another person or property damage may have been caused by human error, and the employee was directly involved in the accident or incident.

(3) Participation in a Drug Abuse Rehabilitation Program: This condition exists when an employee in a sensitive classification or in a sensitive position has notified the employee's appointing authority that the employee is voluntarily participating in a drug abuse rehabilitation program, including any program offered under the State Employee Assistance Program, and this participation is not the result of having tested positive in accordance with this Order. An appointing authority may arrange for testing of the employee at any time during the:

- a. Employee's participation in the rehabilitation program; and
- b. One-year period immediately following the employee's successful completion of the rehabilitation program

(4) Arrest for a Controlled Dangerous Substance Offense: This condition exists when an employee in a sensitive classification or in a sensitive position has notified the employee's appointing authority that the employee has been arrested for a controlled dangerous substance offense.

E. Refusal to be Tested and Positive Test Results

1. Applicants

Refusal by a DGS-MCP applicant to submit to drug testing during any phase of processing, e.g., application, interview, physical, psychological, etc., will result in withdrawal of the conditional offer.

- a. The appointing authority will review the individual's refusal to test and advise the individual of withdrawal of the conditional offer of employment.
- b. A positive test result disqualifies an employee applicant from the position for which an employee applicant is being considered. The employee applicant will be informed of the disqualification by letter.

2. Employees

Refusal by an employee to submit to drug testing or if a employee's test results are confirmed as positive for use of illegal drugs, the appointing authority will be notified and will initiate the appropriate administrative investigation disposition, and filing in accordance

with DGS-MCP policy and the Law Enforcement Officers Bill of Rights. The DGS Personnel Director, or his designee, will recommend duty status, treatment, etc., pending the outcome of the administrative investigation

3. Civilian Applicants

- a. Refusal by a civilian applicant for a sensitive classification or sensitive position, to submit to drug testing at some point in the selection process, including any time during the applicant's probationary period, will result in all of the following:
 1. Disqualification from that position;
 2. Removal from any list of eligibles for any sensitive classification; and
 3. Removal from the list of eligibles for all sensitive positions within the classification of the sensitive position for which the applicant refused to be tested.
- b. An employee who tests positive shall be disqualified from State employment for a position in a sensitive classification or for a sensitive position unless the applicant submits to the Secretary a certificate from a physician certifying on the certificate under oath that the applicant has:
 1. Successfully participated in a drug abuse rehabilitation program of at least 6 months duration; and
 2. Been free of drugs for at least 18 months immediately before reapplying for State service.
- c. The DGS Personnel Director may disapprove a physician's certificate (Refusal to be tested and positive test results), of this Directive, if the DGS Personnel Director determines that the drug abuse rehabilitation program does not meet standards generally recognized in the field of drug abuse treatment or therapy.

5. Civilian Employees

- a. Refusal by a civilian employee to be tested may result in disciplinary action, which may include termination from State service.
- b. When, as a result of random drug test, a civilian employee in a sensitive classification or in a sensitive position tests positive for use of illegal drugs, the appointing authority shall suspend the employee without pay for 15 work days and will determine on a case-by-case basis the employee's duty status and assignment.
- c. As a condition of returning to work, the employee will enroll in a drug abuse rehabilitation program for at least 6 months duration and shall be subject to periodic testing throughout the program.
- d. At the conclusion of the rehabilitation program, the employee shall submit to the Secretary a certification from the attending physician or a certified chemical dependency counselor, licensed certified social worker, or licensed psychologist

associated with the rehabilitation program, certifying on the certificate under oath that the employee has successfully participated in a drug abuse rehabilitation program of at least 6 months duration and has not tested positive for drugs at any point during the rehabilitation program.

- e. If the employee does not enroll in a drug abuse rehabilitation program during the suspension period, or if the employee fails to successfully participate in a drug abuse rehabilitation program for at least 6 months, the appointing authority shall begin proceedings to dismiss the employee.
- f. When, as the result of reasonable suspicion, an incident triggered factor, voluntary participation in a drug abuse rehabilitation program, or arrest for a controlled dangerous substance offense, an employee in a sensitive classification or in a sensitive position tests positive for use of illegal drugs, the appointing authority shall institute proceedings to dismiss the employee in accordance with the employee's status of employment.
- g. When an employee not in a sensitive classification or sensitive position tests positive, the Chief of police shall institute whatever disciplinary action the Chief of Police considers appropriate.
6. Any applicant or employee who tests positive may request, and/or the DGS Personnel Director, or his designee, may request that a specimen be retested. When a request for retesting is made, the following conditions apply:
 - a. The retest will be done on a portion of the original specimen.
 - b. An applicant or employee may request an independent test of a portion of the same specimen which resulted in a positive test result by a Maryland Department of Health & Mental Hygiene certified laboratory of the applicant or employee's own choice at the applicant or employee's own expense.
 - c. Any retest requested by the DGS-MCP Medical Director, or his designee, will be performed by the laboratory which contracts with the State and the full cost will be paid by the DGS-MCP.
 - d. The applicant or employee will be advised of their right to appeal any action resulting from a positive test result by filing an appeal with the Department of Budget & Management within 5 work days of the notification.

F. Confidentiality

1. Strict standards of confidentiality are in effect for the DGS-MCP program for testing for the illegal use of drugs. The documents and information considered as confidential within these standards are as follows:
 - a. Drug Abuse Screen - Applicant Authorization Forms
 - b. Controlled Dangerous Substance Test Orders
 - c. Positive or negative test results
 - d. Reports pertaining to an applicant's or an employee's involvement in the program

- e. DGS-MCP actions resulting from an applicant's or an employee's involvement in the program for testing for the illegal use of drugs. These include but are not limited to the following:
 - 1. Disqualifications from employment
 - 2. Counseling of the employee by the DGS-MCP Medical Director
 - 3. Disciplinary actions
 - 4. Charges for removal
 - 5. Referrals to the Employee Assistance Program.

- 2. The only employees authorized to have knowledge of, or when appropriate, access to, any information concerning an applicant's or employee's involvement in the program for testing for the illegal use of drugs are as follows:
 - a. Appointing authority
 - b. DGS Personnel Director
 - c. Immediate supervisor/Commander
 - d. Employee who has been tested
 - e. Secretary of the Department of Budget & Management
 - f. Secretary of the Department of General Services
 - g. DGS-MCP Internal Affairs Section
 - h. DGS-MCP Legal Counsel Section.
 - i. Test results shall be considered part of the employee's personnel record and subject to the confidentiality protections of State Government Article, 10-616(i), Annotated Code of Maryland, and COMAR 17.04.14.